

CREDIT UNION

CHAPTER 80-2-12

CREDIT UNION LOANS

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80-2-12-.01 Loans Generally, Interpretations and Rulings.

(1) Lending limitations of Code Section 7-1-658(d) shall be computed quarterly with balances reflected on the credit union's statement of condition on the last calendar day of the preceding quarter. Where the lending limitations are reduced by recalculation, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new legal limitations; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations. Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.

(2) Where the credit union has documented the appointment of loan officers in lieu of a credit committee, the duties assigned by law or regulation to the credit committee shall be performed by those duly appointed. Where law or regulations specifically require action by the Board of Directors, such actions may not be delegated to loan officers. Loans in excess of 50 percent of a credit union's maximum loan limitation or such lower limit as the Board of Directors shall establish shall be acted upon by loan officers specifically designated to approve such loans. No person shall have the authority to disburse funds of the credit union for any loan which has been approved by such person.

(3) Advances made under a master note covering a specific purpose or project need not receive specific approval provided in Code Section 7-1-658(f) where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file.

(4) A "secured loan" within the meaning of Code Section 7-1-658(e)(1) includes loans supported by:

(a) a financial statement on any endorser, guarantor or co-maker, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.

(b) “Adequate collateral”. The lack of a perfected lien, inadequate insurance, required margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt.

(c) Properly assigned deposit accounts when they are not subject to check or withdrawal, mature on or after the loan which is secured, and are under the sole control of the credit union. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(5) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of the endorser, guarantor or co-maker, shall not be considered in determining conformity with the law unless proper, current, financial information is in file on the borrower, or endorser, guarantor or co-maker.

(6) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage.

(7) Except as provided in this paragraph, extensions of credit in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered “extensions of credit” included in determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such extensions of credit shall also be subject to applicable requirements for prior written approval and adequate collateral. Such extensions of credit will not be considered extensions of credit for purposes of compliance with this rule, provided that the extension is inadvertent, which requires that:

(a) The extension(s) do not exceed the aggregate amount of \$1,000 at any one time; and

(b) The account is not overdrawn or the insufficient funds check held for more than five business days.

(8) The Department of Banking and Finance shall consider the liabilities of separate persons, corporations and entities to be combined for lending limit purposes, when there is no evidence of a separate source of repayment, there is an apparent lack of ability to service the obligation from the operations of the separate person or corporation without relying on a related source of repayment, or where the separate entities make common use or are dependent upon funds of the group. “Related” shall mean connected by corporate or business structure or by common use or dependence upon funds, facilities or personnel.

Authority Ga. L. 1974, pp 733, 795-797; Ga L. 1983, Act No. 255, effective March 16, 1983; Ga. L. 1989, p. 1252; O.C.G.A. § 7-1-61.

80-2-12-.02 Real Estate Loans.

(1) A real estate loan shall be any loan secured by real estate where the credit union relies upon such real estate as the primary security for the loan. If the proceeds of the loan are used for the purchase of the real estate pledged, the loan will be presumed to be a real estate loan. Where the credit union relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than real estate, the loan does not constitute a real estate

loan, although as a matter of prudent underwriting it may also be secured by real estate, provided:

(a) Current credit information on the borrower and/or the guarantors is maintained sufficient to show the credit worthiness of the borrower or guarantors adequate to support the debt; and

(b) The other collateral is properly pledged to the credit union, protected by adequate hazard insurance, and supported by a statement of appraised or estimated value.

(2) A loan may be secured by a first lien although subordinate to another lien if:

(a) The credit union takes obligations of the borrower in an amount equal to the debt outstanding on the prior mortgage obligation plus the amount secured by such credit union's lien and

(b) The credit union may at any time effect payment of the prior lien. In such case the credit union may require the borrower to make all mortgage payments to such credit union, with that credit union servicing the prior lien from such payments, provided that:

1. Where such "wrap around" arrangements are made, the credit union will obtain a statement from the borrower and the holder of the first lien that no further advances will be made to the borrower by the first lien holder and subject to its lien without the prior consent of the credit union, and that

2. The credit union may repay the first lien at its option with no penalty or a stated prepayment penalty.

(3) Conditions common to all real estate loans as to legal requirements and technical aspects shall be met, including but not limited to evidence of title search, recordation, written appraisal, and adequate insurance protection upon the insurable improvements with loss payable clause to the credit union. The lack of the foregoing technical requirements, while causing the loan to be technically defective, shall not be cause to consider the loan as nonconforming and in violation of law unless the total aggregate borrowings by the borrower exceed the unsecured lending limits of Code Section 7-1-658(d), in which case the real estate collateral will not contribute to the "ample security" of the line.

(4) Interpretations of provisions within the statute:

(a) Nonamortized real estate loans shall not exceed seventy-five percent (75%) of the fair market value of the property pledged, such loans and renewals thereof may be made payable on demand, or on demand after a specified future date, but no such loans or renewals may be made or held for a period in excess of five years, except for interest only loans for single family owner-occupied residential loans (not to exceed one hundred percent (100%) of the fair market value of the property pledged), which may be made for a period not to exceed ten (10) years, after which time sufficient principal payments must be made on a regular basis to amortize the loan in accordance with subparagraph (b) below.

(b) Amortization requires that there will be a reduction of the principal of the debt during the life of the loan sufficient to repay the loan. Such reductions must occur at regular intervals and, if extended indefinitely, must amortize the loan over not more than forty (40) years; provided, however, nothing in this subsection shall limit the use of any mortgage contract which might result in negative amortization (lack of sufficient payment to pay all accrued interest), interest

only loans or extended repayment periods due to fluctuations in interest rates or to graduated payments, provided that the terms of the contract contemplate full amortization of the loan.

(5) Other exemptions from the limitations as to loan to value ratios and requirements for first lien are as follows:

(a) Loans to the extent secured in whole or in part by guarantees or commitments to take over, insure, participate in, or purchase the same, made by any governmental agency of the United States or entities sponsored by the United States, including corporations wholly owned either directly or indirectly by the United States.

(b) Loans which are fully guaranteed or insured by this State or by a State Authority.

(c) Loans secured in whole or in part by real estate occupied by the borrower for residential purposes, provided the credit is extended for purposes other than acquisition of the property and the aggregate outstanding debt secured by the property does not exceed the appraised value of the property plus reasonable estimated values for other collateral held against the total indebtedness.

(d) Commercial loans made for operating funds, working capital, or similar purposes, (other than the purchase of, investment in, or development of real estate) predicated upon the credit standing of the borrower or endorser, guarantor or co-maker, or other such security, but on which real estate collateral (including second mortgages) is taken as precautionary measure against possible contingencies may be exempt from the restrictions and limitations imposed upon real estate loans, provided such loans are supported (in addition to adequate credit information and/or collateral documents) by a general purpose statement signed by the borrower or by a credit memorandum signed by a loan officer, stating the purpose for which the loan is made and sufficient to indicate the exemption is valid.

(e) Loans representing the sale by the credit union of other real estate acquired for debts previously contracted shall be exempt from the limitations as to property values and membership requirements exempted by Code Section 7-1-650(9), but shall be subject to all other requirements of this regulation, provided that the amount so financed shall not be for a greater sum than the credit union's investments in such property.

(f) Loans which, when made, were either unsecured or secured by personalty, but which are now secured in whole or in part by liens on real estate taken in order to prevent loss on a debt previously contracted.

(g) Amortized loans in excess of ninety-five percent (95%) of fair market value, but not more than one hundred percent (100%) of fair market value, where not less than twenty percent (20%) of the outstanding principal balance on the loan is insured or a commitment is made to insure for the first ten (10) years of the loan by a mortgage guaranty insurance company licensed to do business in this State.

(h) Temporary loans maturing in not more than one year made for the purpose of financing the acquisition of single-family, residential property to be used as the principal residence of the borrower and where the aggregate total of all liens against the property does not exceed the purchase price of such property; provided, such loan is to be repaid from the sale of the borrower's former principal residence and the proceeds in excess of amounts owed against the former residence and costs of sale are assigned to the credit union.

(6) All construction and development loans made or held by a credit union shall be exempt from the state loan to value limitations of this statute when made to comply with the following conditions:

(a) Loans having maturities not to exceed sixty (60) months may be made to finance the construction of industrial or commercial buildings where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the credit union's loan upon completion of the buildings.

(b) Loans having maturities not to exceed twenty-four (24) months may be made for residential construction or development purposes where the credit union holds a firm (or conditional) commitment to guarantee or insure from any instrumentality or corporation wholly-owned by the United States or by any Authority of this State as indicated in Rule 80-2-12-.02(5)(a) and (b) of this Rule, or where there is a take-out agreement by any financially responsible lender to advance the full amount of the credit union's loan upon completion of the dwelling.

(c) Temporary construction or development loans may be made by a credit union for a period not to exceed sixty (60) months where the loan is made to finance the construction of residential development which will exceed nine (9) units or industrial or commercial buildings, or for a period not to exceed twenty-four (24) months where the loan is made to finance construction of nine (9) or less residential units or farm buildings or to improve and develop land preliminary to such construction, without a prior commitment to guarantee or insure or take-out agreement by an instrumentality or corporation wholly-owned by the United States or of this State or any other financially responsible lending agency. The parties must actually intend the loan to be paid off or refinanced by a purchaser within the specified maturities and the lots, when development is residential, must be released periodically during the development of land for such purposes, and pro rata reductions must be made in the principal of the debt. All such temporary construction and development loans must be supported by a statement of purpose or intent, and if held beyond the construction or development periods, must be made to conform to the seventy-five percent (75%) and ninety-five percent (95%) limitations; otherwise, they will be held to be nonconforming real estate loans.

(i) 75% and 95% limitations are defined for purposes of this Rule as loans for not more than 75 percent of the fair market value of the real estate in the case of a single maturity loan, or for not more than 95 percent of the fair market value of the real estate in the case of loans that must be regularly amortized.

(d) Commitments to guarantee, insure or purchase must be currently valid, and maturities of the loans may not be extended or loans held beyond the periods stipulated above.

(7) Except as otherwise provided in law or regulations, credit unions may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department.

Authority Ga. L. 1974, pp. 733, 795-797; Ga. L. 1983, Act No. 255, effective March 16, 1983; Ga. L. 1989, p. 1252; O.C.G.A. § 7-1-61.

80-2-12-.03 Participation Loans.

(1) Credit unions may invest in loans made by other federally insured financial institutions. Loan participations purchased must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing credit union had originated the loan itself. Collateral documentation requirements, loan to collateral value requirements, loan limitations and other statutory and regulatory requirements must be met. The purchasing credit union shall obtain from the selling financial institution copies of all pertinent collateral and credit documents or a summary of information sufficient to conclude that all legal and regulatory requirements have been met.

(2) A credit union that purchases a loan participation has the responsibility of conducting loan underwriting procedures on these loans to determine that they comply with the policies of the credit union and meet the credit union's credit standards.

(3) Participation in Pools of Loans:

(a) Loans in the pool or discount line must be specifically identifiable on the records of the selling financial institution.

(b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool.

(c) The participation agreement must provide for a periodic, at least quarterly, report by the seller to the purchaser to account for settlement for losses incurred and to provide information on past due status of loans contained in the pool or discount line.

(d) Where the participation purchased exceeds the purchasing credit union's unsecured lending limit, the participation must be accorded prior, written approval as would be required for such loan if originated directly by the credit union.

(4) Where agreements exist for the seller to repurchase or indemnify loss, participations shall be treated as loans to the seller by the purchasing credit union and the amount of the participation shall be considered to be remaining on the seller's books for purposes of the seller's loan limitations.

(5) The purchasing credit union shall be deemed in compliance with the documentation requirements of this Rule, provided: the credit union may access, on demand, by electronic means, the required pertinent documentation required by this Rule.

Authority Ga. L.; O.C.G.A. § 7-1-61; § 7-1-650; § 7-1-663.